

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS)	
)	
Plaintiff)	
)	
v.)	Civil Action: 04-30126-MAP
)	
CARDIAC SCIENCE, INC.)	
)	
Defendants)	
)	

**DEFENDANT COMPLIENT CORPORATION'S MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR JUDICIAL NOTICE OF REMOVAL**

On September 20, 2006, Plaintiff, Donald C. Hutchins filed a motion requesting that this Court take judicial notice of his attempts to remove litigation pending between Compliant Corporation and Hutchins in state court in Ohio to the United States District Court for the Northern District of Ohio. That Motion should be denied because he has not actually removed the matter, and because his attempts at removal would be fruitless in any event.

First, Hutchins has not filed a Notice of Removal in the Northern District of Ohio. Instead, he has filed what he has labeled a "Motion for Removal" with the Ohio state court. He has filed nothing with the federal court and there is currently no removed action pending in the Northern District of Ohio.

Further, there is no need for this Court to take judicial notice of the purported removal because any attempted removal, even if it had been properly filed, would be null and void under

federal law. Under 28 U.S.C. § 1446(b), a notice of removal, to be effective, must be filed within thirty days of the defendant's initial receipt of the complaint in the matter. The complaint in the Ohio action was served on Hutchins on September 17, 2004. His notice of removal is nearly two years too late.

Moreover, not only are Hutchins' removal attempts woefully untimely, but the Ohio litigation has concluded. Summary judgment was granted in favor of Compliant in that matter on August 24, 2005. A trial on damages was held on September 27, 2005, and a trial on attorney's fees was held on July 19, 2006. The Court entered its Final Judgment Entry on July 19, 2006. Accordingly, the case is closed and nothing remains to be removed.

For the foregoing reasons, this Court should deny Hutchins' Motion to Take Judicial Notice of the "Motion for Removal" he filed in Ohio.

Respectfully submitted,

s/ Jeffrey J. Lauderdale

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CERTIFICATE OF SERVICE

I certify that, on September 25, 2006, I electronically filed a copy of the foregoing Defendant Compliant Corporation's Memorandum in Opposition to Motion for Judicial Notice of Notice of Removal and that parties to the case, registered with the Court's electronic filing system, will receive electronic notice of such filing. A copy of the foregoing was also served upon the following via first-class U.S. mail on today's date:

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Pro Se

s/ Jeffrey J. Lauderdale
One of the Attorneys for Defendant,
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